



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2018–0007]

Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending an existing permanent danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay off of the coast of Virginia. For decades, the Dam Neck Surface Danger Zone (SDZ) served as a firing range for gunnery training at what is now Naval Air Station Oceana's Dam Neck Annex. While the Navy continues to use the SDZ for training, fixed-mount gunnery operations have not been conducted there for over 30 years. This amendment is necessary to accurately identify the hazards associated with training and mission operations to protect the public. This amendment identifies the area within the current danger zone boundary where live fire exercises are no longer conducted and no restriction to surface navigation exists. In addition, the amendment removes references to live fire range conditions and safety procedures since shore-to-sea gunnery operations are no longer conducted.

DATES: Effective: [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David Olson), 441 G Street NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the February 13, 2019, edition of the Federal Register (84 FR 3739) and the regulations.gov docket number was COE–2018–0007. No comments were received in response to the proposed rule.

In response to a request by the United States Navy, and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending 33 CFR 334.390 to amend this danger zone in the waters of the Atlantic Ocean south of the entrance to the Chesapeake Bay adjacent to Naval Air Station Oceana's Dam Neck Annex in Virginia Beach, Virginia.

Procedural Requirements

a. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. For the

reasons stated below, this final rule is not a “significant regulatory action” under Executive Order 12866. Accordingly, this final rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps determined this final rule is not a significant regulatory action because both the area of existing danger zone subject to live firing exercises and the navigation restrictions are being decreased. This final rule allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the small arms range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Impact on Small Entities.

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354). The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments).

The Corps certifies that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or

operators of vessels that intend to transit the danger zone may be small entities, this rule would not have a significant economic impact on any vessel owner or operator because it identifies the portion of the danger zone that is subject to live firing exercises and navigation restrictions, and allows any vessel that needs to transit the danger zone to expeditiously transit through the danger zone when the small arms range is in use. When the small arms range is not in use, the danger zone will be open to normal maritime traffic and to all activities, include anchoring and loitering. In addition, danger zone is necessary to protect public from hazards associated with training and mission operations. Small entities can also utilize navigable waters outside of the danger zone when the small arms range is in use. The Corps has determined that the modified danger zone will have practically no economic impact on the public, including any anticipated navigational hazard or interference with existing waterway traffic. After considering the economic impacts of this amendment of the existing danger zone regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. It may be

reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. I have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act.

The Congressional Review Act, 5 U.S.C. 801 et seq., generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.390 to read as follows:

§ 334.390 Atlantic Ocean south of entrance to Chesapeake Bay; firing range.

(a) The danger zone. (1) A section extending seaward for a distance of 12,000 yards between two radial lines bearing 030° True and 083° True, respectively, from a point on shore at latitude 36° 46' 48" N, longitude 75° 57' 24" W; and an adjacent sector extending seaward for a distance of 15 nautical miles between two radial lines bearing 083° True and 150° True, respectively, from the same shore position. The datum for these coordinates is WGS-1984.

(b) The regulation. (1) To accommodate ingress and egress within the southern approach to the Chesapeake Bay Federal navigation channels, no live fire exercise will take place within the area northeast of, and defined by a line intersecting points latitude 36° 47' 59" N, longitude 75° 46' 05" W and latitude 36° 44' 25" N, longitude 75° 38' 57" W, and this area is open to unrestricted surface navigation.

(2) Within the remainder of the danger zone vessels shall proceed through the area with caution and shall remain therein no longer than necessary for the purpose of transit.

(3) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. When firing is in progress during periods of darkness, red flashing lights will be displayed from conspicuous locations on the beach which are visible from the water a minimum distance of four (4) nautical miles.

(4) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(5) Lookout posts will be manned by the activity or agency operating the firing range at the Naval Air Station Oceana, Dam Neck Annex, in Virginia Beach, Virginia. After darkness, night vision systems will be utilized by lookouts to aid in locating vessels transiting the area.

(6) There shall be no firing on the range during periods of low visibility which would prevent the recognition of a vessel (to a distance of 7,500 yards) which is properly displaying navigation lights, or which would preclude a vessel from observing the red range flags or lights.

(7) Throughout the entire danger zone anchoring, dredging, trawling and any bottom disturbing activities should be conducted with caution due to the potential of unexploded ordnance (UXO) and other munitions and explosives of concern (MEC) on the bottom.

(c) Enforcement. The regulation in this section shall be enforced by the Commander, Naval Air Force Atlantic, U.S. Fleet Forces Command, Norfolk, Virginia, and such agencies as he or she may designate.

Dated: July 11, 2019.

Thomas P. Smith, P.E.

Chief, Operations and Regulatory Division

Directorate of Civil Works

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